IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.18 OF 2003

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C.R.Menon, Sole Proprietor ...Petitioner

v/s

Oil and Natural Gas
Corporation ...Respondent

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Mr.Phiroz Palkhiwala with Mr.H.Toor i/b Lokhandwala & Co. for the Petitioner.
Mr.Sanjay Jain with Mr.Prakash Shinde i/b M.Dhruva & Co. for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 8TH MARCH,2006

P.C.:

1. By this petition the Petitioner challenges award made by the sole arbitrator dt.11-9-2002. By order dated 8-2-2005 made under Section 34(iv) of the Arbitration & Conciliation Act, the arbitrator was directed to resume the proceedings to consider the following two questions:

> (i) to consider whether any sums are due and payable by the petitioner to the respondents or by the respondents to the petitioner and if so, what amounts after taking into account a sum of Rs.9,17,076.58 paid by the respondents to the petitioner.
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> (ii) the Arbitral Tribunal shall consider the counter claim made by the petitioner and record a definite finding in relation to the counter claim.

2. The Arbitral tribunal accordingly resumed the proceedings, considered the question and has made the

award dated 9-9-2005. It is that award which is challenged in the present petition.

3. The first challenge is that so far as the second year of the contract is concerned the Petitioner handled approximately 54000 M.T. of materials. As per the terms of the contract the Petitioner was entitled to be paid at the rate of Rs.41.25 per M.T. for 85,000 M.T., and therefore, the Petitioner should have been paid at the rate of Rs.41.25 per M.T. for approximately 54,000 M.T. of materials handled by the Petitioner. Instead the Arbitrator has directed to pay at the pro-rata rate and at the same time permitted the Respondent to deduct the payment made to the other contractor who was appointed to complete the work during the balance of the year.

. The second ground of challenge is that the Respondent had referred only one question whether an amount of of Rs.9.7 lakhs was paid by the Respondent to the Petitioner. However, the arbitral tribunal has made an award for an amount in excess of Rs.9.7 lakh.

. The third contention urged is that the Respondent

deducted the amount of Rs.17,000/- for the payment that was to be made to the Petitioner. The arbitral tribunal had not disturbed deduction and also has not given any reason for that deduction.

. The fourth ground of challenge is that there was no evidence led that payments were made by the Respondent to M/s.Ravi Raj & Co.

. The last ground of challenge is that the claim for damages for having forced the Petitioner to employ 44 workers has been rejected by the Arbitral tribunal without giving any reason.

4. I have heard the learned Counsel appearing for the Respondents.

5. So far as first challenge is concerned, perusal of the contract shows that the Petitioner was entitled to be paid at the rate of Rs.41.25 per M.T. for 80,000 MT. The Petitioner handled more than 80,000 MT of material during a year. Admittedly, during the second year of the contract the Petitioner has not worked for the complete year. Therefore, as per the contract the Petitioner is entitled to be

paid at pro-rata rate. Submission of the learned Counsel appearing for the Petitioner is that the Petitioner has been paid at the reduced rate at the same time payment made to the subsequent contractor for the work which remained incomplete has been deducted from the payment of the Petitioner. Perusal of the award shows that only those payments are deducted which are made to the subsequent contractor for having done the work, which the Petitioner was liable to make. For example, the Petitioner worked during the month of February,1994. But he did not pay salary to the workmen. Amounts were paid by the Respondent to M/s. A.R.Naim & Sons towards that salary. Similar is the case in relation to the payment of bonus for the year 1993-94 and provident fund for the month of February, 1993. It is clear from the record that payment made by the Respondent to M/s.Ravi Raj & Co. for doing unfinished work was not deducted from the entitlement of the Petitioner. Therefore, I do not find any substance in the first contention urged on behalf of the Petitioner.

6. So far as next contention is concerned, perusal of the order dated 8th February, 2005 shows that the question as to what are the sums payable to the

Petitioner or to the Respondent after taking into consideration the amount of Rs.9,17,000/- paid by the Respondent to the Petitioner was directed to be considered by the arbitrator. That order was passed at the instance of the Petitioner and the Petitioner has not challenged that order. Therefore, now the Petitioner cannot turn around and say that the award in excess of Rs.9,17,000/- cannot be made by the arbitral tribunal. Secondly, even perusal of the reference letter shows that it was within the competence of the arbitrator to consider whether any amount was payable by the Petitioner to the Respondent.

7. So far as third contention is concerned, it is clear from the award that the deduction of Rs.17,000/- was made long back by the Respondent and at no point of time it was challenged by the Petitioner. In the absence of any challenge I do not find any fault in the arbitrator in not disturbing that deduction.

8. So far as the fourth contention is concerned, perusal of the written statement filed by the Petitioner before the arbitrator shows that the fact

of the Respondent making these payments is not disputed. What is disputed is the reason for which the payment has been made and it was also claimed that payment has been made in excess. Therefore, as the fact of Respondent making the payment is not disputed, in my opinion, it was not necessary for the Respondent to again prove that these payment were actually made.

9. So far as the last contention is concerned, the arbitral tribunal has observed that the Petitioner is not entitled to any damages for having employed 44 persons, because this is not a labour contract, but a rate contract. The reason that has been given by the arbitral tribunal to deduct this claim, in my opinion, cannot be termed as perverse. I find that the amount that has been awarded by the learned arbitrator is based on a possible view of the contract between the parties and the evidence on record. Therefore, interference cannot be made in the limited jurisdiction of this court under Section 34 of the Arbitration & Conciliation Act.

10. In the result, therefore, the petition fails and is dismissed. The Petitioner is directed to pay

costs of this petition to the Respondent as incurred by the Respondent.

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